

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SERGIO ALVAREZ,

Plaintiff,

v.

MORRIS-SHEA BRIDGE COMPANY,
INC.,

Defendant.

No. 1:23-cv-01725-JLT-BAM

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, OVERRULING
PLAINTIFF'S OBJECTIONS TO REMOVAL,
DENYING PLAINTIFF'S MOTION TO
REMAND, GRANTING DEFENDANT'S
MOTION TO DISMISS, AND DISMISSING
PLAINTIFF'S COMPLAINT WITHOUT
PREJUDICE AND WITH LEAVE TO
AMEND

(Docs. 4, 6, 14)

Sergio Alvarez seeks damages against Morris-Shea Bridge Company, Inc. in the amount of \$100,000, for fraud. (*See generally* Doc. 1-3.) Morris-Shea removed the action from Fresno County Superior Court based on diversity of citizenship. (*Id.*) Plaintiff objected to removal. (Doc. 6.) On December 21, 2023, Morris-Shea filed a motion to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) or for a more definite statement under Rule 12(e). (Doc. 4.) The Court referred the motion to dismiss to the Magistrate Judge for preparation of findings and recommendations. (Doc. 7.)

On April 22, 2024, the Magistrate Judge issued Findings and Recommendations that recommended (1) Plaintiff's objections to removal be overruled and, as construed, motion for remand be denied, (2) Morris-Shea's motion to dismiss be granted, and (3) Plaintiff's Complaint

1 be dismissed without prejudice and with leave to amend. (Doc. 14.)

2 The Court served the Findings and Recommendations on all parties on April 22, 2024, and
3 notified them that any objections were due within 14 days. (Doc. 14 at 6.) The Court also
4 informed the parties that “the failure to file objections within the specified time may result in the
5 waiver of the ‘right to challenge the magistrate’s factual findings’ on appeal.” (*Id.* at 6-7, quoting
6 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).) No objections were filed and the time
7 to do so has expired.

8 According to 28 U.S.C. § 636 (b)(1)(c), this Court conducted a *de novo* review of the case.
9 Having carefully reviewed the entire matter, the Court concludes that the findings and
10 recommendations are supported by the record and proper analysis. Accordingly, the Court

11 **ORDERS:**

- 12 1. The Findings and Recommendations issued on April 22, 2024 (Doc. 14) are
13 **ADOPTED**.
- 14 2. Plaintiff’s objections to removal are **OVERRULED** and, as construed, Plaintiff’s
15 motion to remand is **DENIED** (Doc. 6).
- 16 3. Morris-Shea’s motion to dismiss (Doc. 4) is **GRANTED**.
- 17 4. Plaintiff’s Complaint is **DISMISSED** without prejudice and with leave to amend.
- 18 5. Plaintiff shall file an amended complaint within 21 days of the date of service of this
19 order.
- 20 6. Plaintiff is advised that the failure to file an amended complaint will result in dismissal
21 of this action without further notice.

22
23 IT IS SO ORDERED.

24 Dated: May 14, 2024


UNITED STATES DISTRICT JUDGE